REMARKS

The present response is to the action mailed in the above-identified case on March 22, 2007, made final. Claims 1-11 and 18-29 are standing for examination. The Examiner rejects claims 3 and 19 under 35 U.S.C. 112, second paragraph. Claims 1-3, 6-10, 18-22 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Iwamura (JP 10-51445 A) in view of Levy et al. (US 5,291,550) hereinafter Levy. Claims 4, 5, 11, 23, 24, 28 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Iwamura in view of Levy and further in view of Applicant's admitted prior art.

In the action the Examiner notes that, as per MPEP §2144.03(C), the statements of Official Notice made in the art rejection have been established as admitted prior art since Applicant has not traversed the Examiner's assertions of Official Notice.

Applicant points out that the portion of MPEP referenced above actually recites that; "The applicant should be presented with the explicit basis on which the examiner regards the matter as subject to official notice and be allowed to challenge the assertion in the next reply after the Office action in which the common knowledge statement was made." Applicant herein takes this opportunity to traverse the Official Notices presented by the Examiner.

Specifically, applicant challenges the Official Notice is taken that it is old and well-known in the art of communications to integrate a B-ISDN protocol with an Internet protocol. Applicant is not familiar with this being well known in the art and requests the Examiner provide a reference to teach integrating B-ISDN with Internet Protocol.

Applicant also challenges the Examiner's Official Notice that it is old and well-known in the art of communications to utilize network bridges as an inexpensive and relatively easy way to connect local area network (LAN) segments. Applicant claims that the control node of the system, dynamically determining and changing QoS for customers, is a network bridge. Applicant requests it be shown in the art.

Official Notice is taken that it is old and well-known in the art of automation to manually perform an activity that is typically automated. Applicant asserts that claim 11, as amended, recites that the live agent receiving the call or hosting the session can

manually alter the QoS. Applicant argues that the agent would be able to dynamically, on the fly, evaluate the future potential profit of the call and alter the QoS accordingly. Applicant is unaware of this feature being taught in the art and requests the Examiner produce such art.

In response to the Examiner's rejections and statements, applicant herein amends claims 1 and 18 to positively recite that the future benefit claimed in the system is profit based. Claims 3 and 19 are herein canceled. Applicant provides detailed arguments showing the combination of the art presented by the Examiner fails to support a valid rejection.

Applicant points out that claims 1 and 18, as amended, specifically recite that; "the control node solicits data from the request and accesses the data storage system to compare the solicited data with data stored therein and wherein depending on the results of data comparison, determining at least an expectation of future profit as a result of the session, a QoS level appropriate to the criteria governing the comparison is selected and executed for application to the granted session.

The Examiner states on page 7 of the Office Action that Iwamura teaches; "an option execution module for executing the selected quality of service option for application to the session (Detailed Description: ¶¶ 24-25 -- If a user has met the conditions of a traffic agreement, then the demanded QOS is maintained and guaranteed. Otherwise, e.g., if the user has insufficient funds, the demanded QOS is not maintained and/or guaranteed); characterized in that upon receiving a session request at the control node, the control node solicits data from the request and accesses the data storage system to compare the solicited data with data stored therein and wherein depending on the results of data comparison, determining at least an expectation of future benefit, a QoS level appropriate to the criteria governing the comparison is selected and executed for application to the granted session (Detailed Description: ¶¶ 24-25 -- If a user has met the conditions of a traffic agreement, then the demanded QOS is maintained and guaranteed. Otherwise, e.g., if the user has insufficient funds, the demanded QOS is not maintained and/or guaranteed. A person who has the funds to pay for services rendered and pays accordingly can be interpreted as being a more profitable customer than someone who

does not have the funds to pay for services rendered and therefore cannot pay for such services. The service provider is expected to reap greater benefit from a user who can pay for a granted session as opposed to a user who cannot pay for the granted session, which is why the service provider guarantees better service to the more financially solvent user. Since a determination of expected benefit is only a prediction, there is no requirement that the prediction be 100% accurate; instead, it is a reasonable guess anticipating future behavior, which is an assumption made by Iwamura when deciding which QOS level to maintain and/or guarantee for each user based on the user's financial situation).

Applicant respectfully disagrees with the Examiner's interpretation of applicant's independent claims and the reference of Iwamura. Applicant points out that Iwamura teaches a third party accounting system for demand and setting out of QoS between a user and a network where the user is allowed certain QoS based upon funds available in an account or the ability to pay for the time and bandwidth requested in the communication, at or before the QoS service is rendered. Applicant argues that the pay-as-you-go system of Iwamura cannot read on applicant's claims, as amended.

Applicant argues that Iwamura does not need to determine a future potential benefit or profit based on the current communication because payment is secured prior to the QoS service being rendered (see [0024] If communication can be performed, a notification that communication is allowed is sent to the user terminal to enter the communication mode. In the communication mode, as long as the user observes the traffic contract, the QOS requested by the network is maintained, and the requested quality is guaranteed. [0025] When judgment is made on whether the network can perform the communication, at the same time, judgment is made on whether the user did not pay the QoS fee or whether the user paid it. If the fee is not paid or cannot be paid, treatment is performed so that either the user cannot enter the communication mode for the network, or the requested quality is not guaranteed. Also, when the network performs control of other fees in addition to the QoS fee, judgment on the other fees is performed so that it is also possible to perform acknowledgement of the communication mode and guarantee of the quality, etc. Said judgment can be performed in the same way as the judgment means for the well known QoS class.) Clearly, Iwamura teaches if payment is

secured the guaranteed QoS service is provided. If payment is not secured the service is not provided.

Applicant points out that The QoS of Iwamura is not based on how "financially solvent" the user is, as espoused by the Examiner. Either the payment is secured or it is not. Iwamura does not have to predict or guess whether or not the user will pay for service, so the Examiner's reasoning above stating; "... it is a reasonable guess anticipating future behavior, which is an assumption made by Iwamura when deciding which QOS level to maintain and/or guarantee for each user based on the user's financial situation regarding Iwamura's ability" is faulty in applicant's opinion.

After the lengthy and detailed arguments provided by the Examiner on behalf of Iwamura above, the Examiner finally admits on page 9 of the Office Action that; "Regarding claim 1, Iwamura does not expressly disclose that the session request received from the client is a request for an agent of a session host nor that the expected future benefit is determined as a result of the session. However, Levy makes up for these deficiencies in its teachings of a call center in which callers are economically routed to an agent based on various factors, such as if the caller or call center is willing to pay the extra cost of routing to a remote location or factors regarding the expected profit and cost attributed to the call center's session associated with answering a caller's call (abstract; col. 3, line 46 through col. 4, line 34).

Applicant points out that Levy specifically teaches; "A multi-class, revenue driven strategy is one of the options that can be followed. Routing parameters reflect customer's expected revenues and costs, which depend on the class of the call, as determined by its origination location and the called 800 number. Therefore, high revenue calls get higher priority than low revenue ones. Advantageously, calls are routed economically (col. 4, lines 18-25). Applicant argues that applicant's claims recite; "the control node solicits data from the request and accesses the data storage system to compare the solicited data with data stored therein and wherein depending on the results of data comparison, determining at least an expectation of future profit as a result of the session. Clearly, Levy is limited to classifying a call routing priority based on the origination location of

the call and the 800 number dialed. In the art of Levy, a class is assigned to a call based on call origination and 800 number dialed.

Applicant argues that Levy fails to teach the session request received from the client is a request for an agent of a session host nor that the expected future benefit is determined as a result of the session, as claimed in applicant's invention.

Therefore, applicant believes the arguments provided above, along with the removal of "Applicant's admitted prior art" clearly show applicant's claims, as amended, are patentable over the art of Iwamura and Levy. Claims 1 and 18, as amended, are patentable over the art of Iwamura, as argued above. Dependent claims 2, 4-11 and 20-29 are patentable on their own merits, or at least as depended from a patentable claim.

As all of the claims, as amended, are patentable over the art, applicant respectfully requests that the rejections and objection be withdrawn and that the case pass quickly to issue. If any fees are due beyond fees paid with this amendment, authorization is made to deduct those fees from deposit account 50-0534. If any time extension is needed beyond any extension requested with this amendment, such extension is hereby requested.

Respectfully Submitted,
Laurent Philonenko

By */Donald R. Boys/*
Donald R. Boys
Reg. No. 35,074

Central Coast Patent Agency, Inc.
3 Hangar Way, Suite D
Watsonville, CA 95076
831-768-1755